

from the judgment of Atkin L.J. in *Barton v. Fincham*, *supra*, and that of Bucknill L.J. in *Thorne v. Smith*, *supra*, are in their Lordships' view sound authority for the proposition that where the landlord makes a claim for possession based on one of the grounds contained in the Acts, and the tenant in effect admits that the claim is well founded, the judge has no duty to insist *ex proprio motu* that the facts be investigated, and that an order for possession made in such circumstances is valid and effective.

Their Lordships are of opinion that by parity of reasoning where an owner of premises makes a claim for possession based on averments that the occupants' possession is not protected by the Acts, and the defendant in effect agrees that the claim is well founded, then an order for possession made in the proceeding is similarly valid and effective. Special considerations might arise if in subsequent proceedings the defendant established by evidence that his agreement was given in pursuance of a compromise which might have involved his being paid a sum of money. Their Lordships prefer to reserve their opinion as to the legal consequences in such a situation. In the present case the respondents made no attempt to adduce evidence of such a compromise. The respondents through their counsel agreed to the consent judgment, which specifically stated that they admitted the appellants' claim. In their Lordships' opinion that can only mean that they admitted that the appellants' claim was soundly based, *viz.*, that their occupation was founded upon no legal title but was as trespassers. The Court of Appeal were unwilling to accept that interpretation, on the ground that the relevant words were words of style common in consent judgments. That may be so, but is not a good ground for refusing to give effect to the words in their ordinary and natural meaning. The Court of Appeal also appear to have been much influenced by their view that the respondents would have had a good defence on the merits, but the fact remains that they did not persist with their defence. Essentially, however, the Court of Appeal fell into error in holding that the *Nanyang* case, *supra*, was an authority necessitating the conclusion which they reached.

For these reasons their Lordships allow the appeal and enter judgment for the appellants with costs here and in the courts below.

Appeal allowed.

Solicitors: Coward Chance; Le Brasseur & Bury.

A SINGAPORE REPORTS

FALCON PROPERTIES PTE. LTD. v. NG SUN KOK MOULD MAKING CO.

B [C.A. (Wee Chong Jin C.J., Thean & Chua JJ.) March 6, 1985]

[Singapore – Civil Appeal No. 53 of 1983]

Landlord and Tenant – Distress – Tenant in arrears of rent – Landlord selling premises – Landlord distraining after completion of sale and registration of transfer – Whether landlord entitled to issue writ of distress – Distress Act (Cap. 20), ss. 2, 4, 5, 16 & 17 – Land Titles Act (Cap. 276), ss. 54 & 71 – Control of Rent Act (Cap. 266), s. 28 – Conveyancing and Law of Property Act (Cap. 268), s. 10(1).

D The issue in this appeal is whether the appellants were entitled to take out a writ of distress against the respondents. By a written agreement dated June 4, 1980 the appellants as landlords let out certain premises ("the said property") to the respondents for a one-year term from June 1, 1980 to May 31, 1981. The said property is part of a larger piece of land ("Lots 905 and 4187"). On November 25, 1981 the appellants signed an agreement to sell Lots 905 and 4187 to City Developments with vacant possession. E The sale was completed on March 24, 1982 and the transfer in favour of City Developments was registered on May 6, 1982 in the Registry of Titles. The appellants obtained leave and issued a writ of distress for \$10,000 being arrears of rent on June 8, 1982. The writ was executed on June 17, 1982 when the bailiff seized the goods of the respondents, who applied to set it aside. The District Judge ordered the writ to be discharged on condition that the respondents pay the sum of \$10,000 within 10 days. The respondents then appealed to the High Court, which allowed the appeal and ordered the appellants to refund the sum of \$10,000. F The appellants appealed to the Court of Appeal.

G Held, dismissing the appeal: (1) the transaction being governed by the Land Titles Act, under section 54, upon registration of the transfer all the estate or interest of the appellants in Lots 905 and 4187, together with all easements, rights and powers thereto belonging or appertaining, passed to and vested in City Developments as a proprietor thereof. On and from May 6, 1982, they, not the appellants, became the lessor of the said property. They stepped into the shoes of the appellants and became entitled to receive the rents of the said property; H

(2) in the result, when the appellants issued the writ on June 8, 1982, they were no longer a lessor of the said property under any lease or agreement of tenancy; nor were they a "person claiming to be entitled in any capacity to receive rents due under any such lease or agreement of tenancy"; I

(3) it must also be a requirement implicit in section 5(1) of the Distress Act that the person from whom the rent is due or payable is the tenant of the premises of which the distrainer is the landlord;

(4) the appellants were not entitled to take out the writ of distress and the appeal should be dismissed with costs.

COURT OF APPEAL.

Donald Yeo for the appellants.

Teo Chek Siew for the respondents.

Cur. Adv. Vult.

Chua J. (delivering the Judgment of the Court): On May 17, 1982, Falcon Properties Pte. Ltd. (appellants) applied in the Subordinate Courts for leave to issue a Writ of Distress against Ng Sun Kok Mould Making Co. (Respondents) for the recovery of rent in respect of premises No. A-G-8, being a portion of No. 346 Balestier Road, Singapore, (the said property) for the period May 1, 1981, to April 1, 1982. Leave to issue a Writ of Distress to distrain for a sum of \$10,000 being arrears of rent was granted on June 8, 1982. A Writ of Distress was issued by the appellants against the respondents on June 8, 1982, and the bailiff of the Subordinate Courts seized the goods belonging to the respondents on June 17, 1982.

On July 5, 1982 the respondents applied to have the Writ of Distress set aside on the grounds of illegality, irregularity and excessive enforcement. By an order dated October 11, 1982, the District Judge, *inter alia*, made the following orders:

"1. ...

2. By virtue of Section 17 of the Distress Act Cap. 20 the Writ of Distress is discharged on the following conditions:-"

"(i) That the defendants pay to the plaintiffs the sum of \$10,000.00 within 10 days of the pronouncement of this order.

(ii) In the event if the defendants fail to pay as aforesaid the plaintiffs are at liberty to auction the seized goods."

The respondents then appealed to the High Court. On September 16, 1983, the High Court (Rajah J.) allowed the appeal with costs and ordered the Appellants to refund to the respondents the \$10,000 paid to them by virtue of the order of October 11, 1982, made by the District Judge.

The appellants now appeal to this Court.

The undisputed facts are these. By an agreement in writing dated June 4, 1980, the appellants as landlords let out the said property to the respondents for a period of one year commencing from June 1, 1980 to May 31, 1981. The said property is part of a larger piece of land marked on the Government resurvey map as Lots 905 and 4187 of Mukim XVII ("Lots 905 and 4187")

A which had been brought under the Land Titles Act (Cap. 276) since August 26, 1976 or thereabout and are now comprised in a Certificate of Title registered in Volume 178 Folio 7 in the Registry of Titles. The appellants on November 7, 1980 intimated to the respondents that on the expiration of the term under the agreement it would not be renewed and requested the respondents to vacate the said property and return vacant possession thereof to the appellants. However, on the termination of the tenancy the respondents held over as statutory tenants under the Control of Rent Act (Cap. 266). On November 25, 1981, the Appellants signed an agreement to sell Lots 905 and 4187 to City Development Ltd. (City Developments) with vacant possession and in accordance with the sale agreement the sale was completed on March 24, 1982, when the instrument of transfer was executed and delivered to City Developments. The transfer was registered with the Registry of Titles on May 6, 1982.

Rajah J. dealt with only one of the grounds of appeal raised in the Petition of Appeal which he said was basic to the appeal, namely, that as at the date of the issue of the Writ of Distress on June 8, 1982, the appellants had already ceased to be the owners of the said property and had no right at all to issue the Writ of Distress.

Rajah J. dealt with sections 4 and 5 of the Distress Act (Cap. 20). He said:

"Under Section 4 of the Distress Act (Cap. 20 of 1970 Edition) no landlord shall distrain for rent except in the manner provided by the Act. It seems to me that the scheme of the Act is that there must be the relationship of landlord and tenant before distraint may properly issue unless otherwise provided for in the Act. Section 5(3) provides for 2 cases where distraint may issue without such relationship existing. The first is where a tenant holds over after his tenancy has been lawfully terminated and secondly where the goods of such a tenant are still on the premises. In the instant case such is not the position. Here the Respondents had on or before the issue of the Writ of Distress ceased to be the owners of the premises and therefore the relationship of landlord and tenant could not exist as between the Appellants and the Respondents. Their only remedy to recover the rent owing would be by suing the Appellants for rent owing. In these circumstances the application by the Respondents under Section 5 of the Act for the issue of a Writ of Distress was misconceived and should in the first instance never have been acceded to. The Writ of Distress having been issued, then, when the Appellants made their application under Section 16 of the Act the learned District Judge should have acceded to their application and set aside the Writ of Distress."

The appellants contend that at the date of the issue of the Writ of Distress they were the land-

lords within the meaning of "landlord" as defined in section 2 of the Distress Act, which reads:

" 'Landlord' means the lessor or sub-lessor of any premises, under any lease or agreement of tenancy, and includes any person claiming to be entitled in any capacity to receive rents due under any such lease or agreement."

The appellants submit that they come within the expression "any person claiming to be entitled in any capacity to receive rents due under any such lease or agreement".

We are unable to accept this argument. To fall within the meaning of a landlord as defined in section 2 of the Act a person must be the lessor or sub-lessor of any premises under any lease or agreement of tenancy. It is true that the term "the lessor or sub-lessor" has been extended to include any person claiming to be entitled in any capacity to receive rents due under any such lease or agreement. However, the concluding part of the extension: "under any such lease or agreement" refers to the first mentioned lease or agreement of tenancy under which the landlord is "the lessor or sub lessor" of the premises. The extension does not cover a person claiming to be entitled in any capacity to receive rents under any other lease or tenancy agreement. Such an extension is obviously intended to include a personal representative of the lessor or sub-lessor of the premises in question.

We next turn to consider whether the appellants are a landlord of the said property within the meaning of this Act. In this connection it is necessary to determine precisely the position of the appellants and that of the respondents in relation to the said property. As a matter of convenience we propose to deal with their respective positions in the inverse order. The respondents first held the said property as a contractual tenant and on the determination of that tenancy on May 31, 1981, they held the said property as a statutory tenant of the Appellants. Section 28 of the Control of Rent Act (Cap. 266) so far as material provides:

"28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions namely:

(a) he shall be deemed to hold as tenant from month to month, and subject thereto, shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy or sub-tenancy as the case may be, so far as they are consistent with the provisions of this Act and with a holding from month to month:

...

(c) he shall be subject to all the rights and powers conferred on a landlord under and by virtue of the Distress Act."

A At that point of time the appellants clearly were the landlord of the said property within the meaning of the Distress Act and had a right to distrain for any rent in arrears under and subject to the provisions of section 5(1) of the Distress Act which provides as follows:

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"5(1) A landlord or his agent duly authorized in writing may apply ex parte to a judge or registrar for an order for the issue of a writ, to be called a writ of distress, for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding twelve completed months of the tenancy immediately preceding the date of the application; and the judge may make such order accordingly."

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Then on November 25, 1981, the appellants sold the whole of Lots 905 and 4187 (of which the said property forms a party) to City Developments and completed the sale on March 24, 1982, when the instrument of transfer thereof was duly executed and delivered to the latter. The transfer was subsequently registered in the Registry of Titles on May 6, 1982. The transaction being governed by the Land Titles Act (Cap. 276), under section 54 thereof upon registration of the transfer all the estate or interest of the appellants in Lots 905 and 4187, together with all easements, rights and powers, thereto belonging or appertaining, passed to and vested in City Developments as a proprietor thereof. And by section 71(2) of the Land Titles Act, Part III of the Conveyancing and Law of Property Act (Cap. 268) (which comprises sections 10 to 17 thereof) applies, *mutatis mutandis*, to Lots 905 and 4187, and section 10(1) of the latter Act provides:

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"10(1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or any part thereof, immediately expectant on the term granted by the lessee, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased."

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I It is true that the said section 10(1) refers to a lease, but in our view the term "lease" therein includes a tenancy agreement or terms of a statutory tenancy.

Hence, on and from May 6, 1982, City Developments became the owner of the said property. They, and not the appellants, became the lessor of the said property; they stepped into the shoes of

the appellants and became entitled to receive the rents of the said property. The statutory tenancy of the said property held by the respondents remained unaffected by such change of ownership and they continue to hold the said property as a statutory tenant of the City Developments. In the result, when the appellants issued the writ of Distress on June 8, 1982, they were no longer a lessor of the said property under any lease or agreement of tenancy; nor were they a "person claiming to be entitled in any capacity to receive rents due under any such lease or agreement of tenancy".

For completeness we should add that it must also be a requirement, which is implicit in section 5(1) of the Distress Act, that the person from whom the rent is due or payable is the tenant of the premises of which the distrainer is the landlord. This requirement springs directly from the provision of section 5(3) of the Act, which gives a right to a landlord to distrain for arrears of rent of any premises after the determination of the tenancy where the tenant remains in occupation of such premises or where his goods are still on the premises. The term "tenant" is defined in the Act to mean "any person from whom a landlord claims rent to be due under any such lease or agreement". Here again the "lease or agreement" refers to the lease or agreement in the definition of landlord. On this basis we are in agreement with Rajah J. that that scheme of the Act requires a relationship of landlord and tenant (each term as defined in the Act) to subsist before distraint may be properly issued under section 5(1) and that section 5(3) is an exception to this requirement.

For all these reasons we are of the opinion that the appellants were not entitled to take out the writ of distress and accordingly we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: Donald Yeo Hock Chwee; Thomas Tham & Partners.

CHIAM HENG HSIEN v. JURONG TOWN CORPORATION

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.)
April 4, 1985]

[Singapore – Civil Appeal No. 48 of 1983]

Contract – Employment – Probation and confirmation – Whether employment permanent – Breach of service conditions – Termination – Wrongful dismissal – Question of appropriate relief.

Administrative law – Employment – Probation and confirmation – Whether employment permanent – Breach of service conditions – Termination – Wrongful dismissal – Question of appropriate relief.

The appellant in this case was by a written agreement of May 31, 1971 engaged by the respondent as an executive officer from June 1, 1971. He was to be on probation for three years. He was, however, confirmed in his post from June 1, 1972 and continued to serve as such executive officer. On June 24, 1976, he received from the respondent a letter dated June 23, 1976 alleging he was in breach of Rule 111 of the terms and conditions of service of the respondent in that he had taken up part-time employment by becoming an active partner of a hotel and also a partner of a restaurant. He was immediately suspended from service. In his reply, the appellant explained that he had merely inherited his late father's shares in the two businesses and was not an active partner as alleged. The appellant did not attend a hearing by the disciplinary inquiry committee on September 15, 1976 although he was informed on September 7, 1976. He later received a letter dated November 5, 1976 from the respondent, informing him that he had been found guilty of violating Rule 111 and that his service was terminated with effect from June 23, 1976.

This prompted the appellant to file the present action seeking a declaration that the dismissal was null and void and a declaration that he had continued and was in the employment of the respondent in the position he held before June 23, 1976 and was entitled to remuneration as such. Alternatively, he sought damages. The respondent conceded the dismissal was wrongful and that the appellant was entitled to damages but not the declarations. The issue was one of appropriate relief. The learned trial judge refused the declarations. He awarded to the appellant his salary for the period from June 1, 1976 to November 5, 1976 and a sum equivalent to three months' salary as damages. The appellant appealed.

Held, dismissing the appeal: (1) the terms of service under which the appellant was employed did not confer on him a permanent employment by the respondent until his retirement;

(2) there were no circumstances which made it just or proper to grant the declarations. The appellant's remedy lay in a claim for damages;

(3) on the basis of assessment in *Gunton's case*⁽⁴⁾, the appellant was not entitled to damages in excess of three months' salary.